

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC., RENTAL
SOFTWARE ANTITRUST
LITIGATION (NO. II)**

Case No. 3:23-md-3071
MDL No. 3071

This Document Relates to: ALL CASES

**DECLARATION OF JOSEPH R. SAVERI IN SUPPORT OF SCOTT & ROBINS
LEADERSHIP APPLICATION AND FOR THE APPOINTMENT OF JOSEPH SAVERI
LAW FIRM, LLP TO THE PLAINTIFFS' STEERING COMMITTEE**

I, Joseph R. Saveri, pursuant to 28 U.S.C. §1746, declare that the following is true and correct to the best of my knowledge.

1. I am a member in good standing of the State Bar of California, State Bar Number 130064.

2. I am the founder and managing partner of the Joseph Saveri Law Firm, LLP ("JSLF"), counsel for plaintiffs in the following actions that are part of the above-captioned multidistrict litigation (the "MDL"):

- a. *Marchetti v. Realpage, Inc.*, case no. 3:23-cv-0380; and
- b. *Schmidig v. Realpage, Inc.*, case no. 3:23-cv-0391.

3. Pursuant to this Court's April 19, 2023, Order (Dkt. No. 3) and the Court's Minute Entry dated May 31, 2023, I submit this declaration in support of the Scott & Robins Leadership Application submitted by Scott+Scott Attorneys at Law LLP ("Scott+Scott") and Robins Kaplan LLP ("Robins Kaplan"), and to seek appointment of JSLF to the Plaintiffs' Steering Committee as detailed in the Scott & Robins Leadership Application.

I. Joseph Saveri Law Firm, LLP Has A Demonstrated Ability to Work Cooperatively, Professionally, and Respectfully with Others.

4. I have held leadership positions in many large and complex class actions, where I have developed a management style that is inclusive and collaborative. Success in large class actions such as this often comes when multiple firms are able to work together as a team, which requires mutual trust and respect among the firms on the team, and a sense that all team members will share in the responsibilities and benefits that come from vigorously prosecuting the case. This has been a hallmark of the cases in which I have held a leadership role. In each of these cases, I have fostered a cohesive atmosphere through open communication and shared responsibility. The same is true for JSLF Partners Steven N. Williams and Cadio Zirpoli. This approach has led to positive outcomes for the clients achieved in a timely and efficient manner that preserves the resources of the Court and the parties.

5. JSLF's attorneys are well-qualified, willing, and available to serve on the Plaintiffs' Steering Committee. We understand the nature and scale of the responsibilities and are prepared to commit the time, energy, and finances necessary to prosecute this case successfully. Throughout my career as a class action attorney, I have consistently demonstrated the ability to work efficiently and successfully to manage complex litigation, to minimize costs, and to avoid duplication of effort.

6. JSLF is familiar with the work that Scott+Scott and Robins Kaplan have done in cases such as *In re Payment Card Interchange Fee and Merchant Discount Litig.*, No. 05-md-1720 (E.D.N.Y.) and *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13-cv-07789 (S.D.N.Y.). In my opinion they are eminently qualified to lead the Multifamily Plaintiffs in this MDL. I support the appointment of these two firms as interim co-lead counsel, as set forth in the

Scott & Robins Leadership Application, and I look forward to collaborating with them should the opportunity present itself.

7. Below I also provide details in support of our appointment to the proposed Plaintiffs' Steering Committee as chair of the Western Region.

II. JSLF Has a Proven Track Record of Success Litigating Complex Antitrust Class Actions.

8. In 2012, after 20 years as Managing Partner of the antitrust and intellectual property practice at Lieff, Cabraser, Heimann & Bernstein, LLP, I founded JSLF with a vision of creating a class action law firm that would operate at the highest levels. In the 11 years JSLF has been in existence, I have attracted outstanding talent to the firm and have established a top-tier law firm whose excellence has been recognized by many prestigious legal organizations and publications, including the American Antitrust Institute, Benchmark Litigation, Chambers USA, Law360, the Legal 500, and *Super Lawyers*. The attorneys at JSLF are experienced class action attorneys with a track record of success in complex class actions such as this, including:

- *In re Capacitors Antitrust Litig.* (N.D. Cal.) (“*Capacitors*”) (price-fixing action against capacitors manufacturers resulting in settlements totaling \$604.55 million);
- *In re High-Tech Employee Antitrust Litig.* (N.D. Cal.) (“*High-Tech*”) (“no-poach” wage-fixing class action on behalf of high-tech employees resulting in \$435 million in settlements from defendants Google Inc., Apple Inc., Adobe Systems Inc., Intel Corporation, Intuit Inc., Lucasfilm, Ltd., and Pixar);
- *In re Cipro Cases I & II* (San Diego County Sup. Ct.) (\$399 million in settlements on behalf of a California class who challenged a “pay for delay” scheme among drug manufacturers);
- *Scola v. Facebook, Inc.* (San Mateo County Sup. Ct.) (\$52 million settlement on behalf of a class of Facebook content moderators); and
- *In Re Titanium Dioxide Antitrust Litig.* (D. Md.) (\$163.5 million in settlements from defendants including E.I. DuPont de Nemours & Co. and Huntsman International LLC).

JSLF was lead or co-lead counsel in all these cases. Additional information about JSLF's cases and qualifications can be found in the JSLF Firm Resume, attached hereto as Exhibit A, and online at www.saverilawfirm.com.

III. JSLF Will Bring Top-Tier Attorneys to this Litigation.

9. JSLF will bring an experienced and dynamic team to the leadership in this case. Our attorneys have more than 100 years of combined litigation experience and have recovered more than \$4.5 billion on behalf of their clients. JSLF has been recognized as one of the top firms in California and nationwide by the American Antitrust Institute, Chambers USA, Benchmark Litigation, the Legal 500, and the California *Daily Journal*, including recently being honored as "Practice Group of the Year" by Law360 in its competition and class action categories.

10. I have thirty years' experience successfully leading or co-leading class actions. As the cases cited above show, I have achieved positive results for my clients in some of the largest and most complex class actions of the past decade. The quality of my work has been recognized by several well-respected organizations and publications. I have twice been selected as one of the California *Daily Journal's* California Lawyers of the Year, as well as being honored as a top plaintiffs' attorney for many years running by Chambers USA, Martindale Hubbell, Benchmark Litigation, the Legal 500, Super Lawyers, and Who's Who Legal, among others. I am one of the authors of *California Antitrust and Unfair Competition Law*, a legal treatise published by the State Bar of California's Antitrust and Unfair Competition Section, and have written several articles on antitrust and complex litigation issues as well. I have served on the Northern District of California's Civil Rules Advisory Committee and eDiscovery Committee, both of which developed rules and procedures later adopted by the Court. And I have frequently spoken domestically and overseas on antitrust and class action panels, including a U.S. Department of

Justice Antitrust Division roundtable to discuss the Antitrust Criminal Penalty Enhancement & Reform Act.

11. JSLF Partner Steven N. Williams has more than 25 years of experience as a class action attorney, and has recovered more than \$2 billion for his clients. He has served in leadership positions in more than a dozen antitrust class cases, including many of the most prominent antitrust class cases litigated in the United States over the last decade, such as *In re Automotive Parts Antitrust Litigation* (E.D. Mich.) and *In re Static Random Access Memory Litigation* (N.D. Cal.). He has spoken at meetings of the American Bar Association Antitrust Section, the California State Bar Antitrust, UCL and Privacy Section, the New York State Bar Association Antitrust Section, and the Consumer Attorneys of California, and has written and lectured on various topics including antitrust, multidistrict litigation, complex litigation, and electronic discovery. Mr. Williams serves as an advisor to the Executive Committee of the California Lawyers Association Section on Antitrust and Unfair Competition. He has been consistently honored by many organizations and publications such as Chambers USA, Martindale Hubbell, Law360 (selected as one of its Titans of the Plaintiffs Bar), Lawdragon, the *California Daily Journal* (selected as one of its California Lawyers of the Year), Super Lawyers, and Who's Who Legal, among several others.

12. JSLF Partner Cadio Zirpoli joined the firm last year. After gaining trial experience at the San Francisco District Attorney's Office, he distinguished himself for his work on many important class actions during his twenty years at Saveri and Saveri, Inc., including the "electronics cases" in the Northern District of California (*In re Dynamic Random Access*

Memory Antitrust Litig., *In re Cathode Ray Tube Antitrust Litig.*, *In re Optical Disk Drive Products Antitrust Litig.*, and *In re Lithium-Ion Batteries Antitrust Litig.*) and the “protein cases” (*In re Broiler Chicken Antitrust Litig.* (N.D. Ga.) and *In re Pork Antitrust Litig.* (D. Minn.)). Among other honors, Mr. Zirpoli has been a Super Lawyer since 2014, including Top 100 for Northern California since 2018, and has been honored for “Outstanding Antitrust Litigation Achievement in Private Law Practice” for 2022 by the American Antitrust Institute.

13. Associate Kevin Rayhill has worked at JSLF since the firm’s beginning, including on many of the cases cited above. He has participated in nearly every aspect of running a class action, including factual development and drafting complaints, drafting and responding to written discovery, taking and defending depositions of percipient witnesses and experts, supervising large scale document review teams, drafting and arguing discovery motions and dispositive motions, preparing for trial including drafting jury instructions and motions in limine, and engaging in settlement negotiation and administration.

14. Associate Kathleen McMahon has a Bachelor of Arts in criminal justice from the University of Nevada, Reno, and a Juris Doctor from the University of San Francisco Law School. She has extensive experience in antitrust class actions and other areas of law, including case development; factual investigation and drafting of pleadings; researching, drafting, and arguing motions in federal and state court; and engaging in all stages of discovery, including taking depositions. She also has experience practicing tax law, property law, and criminal law.

15. JSLF has been involved in this case since the initial investigation stage. We recognized from the start that it represents one of the first antitrust cases to allege the use of algorithms to facilitate *sub rosa* collusion between horizontal competitors, which we believe is an important new area of antitrust law. As a result of advances in computing power and

sophistication and the accumulation of vast amounts of information in the cloud, third party algorithms like RealPage's Artificial Intelligence Revenue Management ("AIRM") can now set supracompetitive prices for cartel members that agree to provide their data to RealPage and to accept RealPage's supracompetitive pricing. Because the cartel members allegedly only provide their confidential data to a third party (RealPage) that in theory is not a direct competitor, cartel members can fly under the radar, claiming they neither shared their data with their horizontal competitors nor received their competitors' data. This is because they did not have to: The algorithm processes the confidential data and supplies the supracompetitive price, functioning in the exact same way as the proverbial smoke-filled room in classic collusion cases. RealPage's AIRM algorithm provides cartel members with supracompetitive pricing based on local competitors' confidential data on a nearly real-time basis, enabling cartel members to detect any deviation from the cartel price and to enforce pricing discipline. JSLF has gone further than other firms to develop this theory, and looks forward to the opportunity to pursue it further with Scott+ Scott and Robins Kaplan should the Court so decide.

IV. JSLF Has the Resources to Advance the Litigation in a Timely Manner.

16. As noted above, JSLF has mounted some of the largest and most significant class actions of the past decade. In case after case, JSLF has committed the resources necessary to see large and complex cases through to a successful conclusion. For example, in *Capacitors* JSLF led a team of 18 law firms in a class action against 23 defendants, the vast majority of which are in Japan or Taiwan. JSLF developed the case from the ground up, conducting discovery, hiring multiple experts, and eventually recovering \$604.55 million in settlements for the class, which far exceeded calculated singles damages of \$427 million: an antitrust law rarity. Similarly, in *High-Tech* JSLF took on seven of the largest technology companies in the world using the then-novel "no-poach" legal theory of law. JSLF knew from the start that this would be fiercely

contested, including an intense battle of the experts. JSLF committed the financial resources and personnel necessary to achieve settlements totaling \$435 million. Here, JSLF foresees another fierce battle based on a novel legal theory. We are committed to providing the requisite resources to see the case through.

17. JSLF is willing and able to dedicate a roster of experienced attorneys to litigate this case efficiently and expeditiously. Our prior success in large and complicated class actions demonstrates our willingness and ability to devote significant resources to litigating this case to a timely and just resolution.

18. JSLF has no agreement with a litigation funder for purposes of this case.

V. JSLF And the Plaintiffs We Represent Support Appointment of Scott+Scott and Robins Kaplan as Lead Counsel and Herzfeld Suetholz Gastel Leniski & Wall PLLC as Liaison Counsel.

JSLF is familiar with and strongly supports the candidacy of Scott+Scott and Robins Kaplan for interim class counsel and Herzfeld Suetholz Gastel Leniski & Wall PLLC for Liaison Counsel. JSLF worked closely with those firms to support the transfer of this case to the Middle District of Tennessee and to create a unified and well-organized legal team for the Plaintiffs. Both firms are highly regarded within the antitrust bar and will bring strategic acumen, decades of experience successfully prosecuting antitrust class actions, a collaborative leadership style and the requisite commitment and resources to see the action through to a successful outcome. JSLF looks forward to the opportunity to work with them.

VI. JSLF And the Plaintiffs We Represent Support Appointment of Kozyak Tropin and Throckmorton LLP to the Plaintiffs' Steering Committee..

19. JSLF has worked closely with Benjamin Widlanski and Javier Lopez of Kozyak Tropin & Throckmorton LLP ("KTT") while developing and prosecuting the *Schmidig* and *Marchetti* cases referenced above. Mr. Widlanski and Mr. Lopez are highly respected based on

their substantial experience litigating complex antitrust class actions and achieving outstanding results for their clients and class members. I support the appointment of KTT to the Plaintiffs' Steering Committee, in addition to seeking the appointment of JSLF to that Committee.

20. JSLF has not yet had the opportunity to work with the other candidate firms for liaison counsel and the Plaintiffs Steering Committee. However, based on representations from Scott+Scott and Robins Kaplan, and our own research, JSLF believes the other candidate firms will be strong additions to the team that we will be glad to work with.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 5th day of June, 2023, in San Francisco, California.

	<p>By: <u>/s/ Joseph R. Saveri</u> Joseph R. Saveri</p> <p>JOSEPH SAVERI LAW FIRM, LLP Joseph R. Saveri (admitted <i>pro hac vice</i>*) Steven N. Williams (admitted <i>pro hac vice</i>*) Cadio Zirpoli (admitted <i>pro hac vice</i>*) Kevin E. Rayhill (admitted <i>pro hac vice</i>*) Kathleen McMahon (<i>pro hac vice</i> forthcoming) 601 California Street, Suite 1000 San Francisco, CA 94108 Telephone: (415) 500-6800 Fax: (415) 395-9940 jsaveri@saverilawfirm.com swilliams@saverilawfirm.com czirpoli@saverilawfirm.com krayhill@saverilawfirm.com</p> <p><i>Counsel for Plaintiffs Matteo Marchetti and Shelley Schmidig</i></p> <p>*Admitted to practice pursuant to the Court's Order Dated April 19, 2023, ECF No. 2.</p>
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